

Exhibit B

CONTRACT TO GROUND LEASE (Lake Anne/Crescent D3 Building)

This Contract to Ground Lease (the "Agreement") is made and entered into as of _____, 2015 (the "Effective Date") by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic, in its proprietary capacity and not in its governmental or regulatory capacity ("Owner"), and COMMUNITY PRESERVATION AND DEVELOPMENT CORPORATION, a Maryland non-stock corporation ("CPDC") or its permitted assign or designee (CPDC or such assignee or designee being hereafter referred to as, "Optionee").

RECITALS:

- R-1. Owner is the fee simple owner of a 16.5 acre tract of land in Reston, Virginia, collectively having tax assessment numbers as 17-2 ((16)) 1A and 17-2 ((14)) (1) 2G, upon which certain residential apartment buildings are built and which are commonly referred to as the Crescent Apartments (the "Crescent Property").
- R-2. The Crescent Property is currently leased to the Fairfax County Redevelopment and Housing Authority ("FCRHA") pursuant to an agreement by and between Owner and the FCRHA.
- R-3. The Crescent Property currently consists of five (5) garden-style 3-story apartment buildings, containing a total of 181 units (the "Existing Units"), a majority of which are currently affordable to households earning sixty percent (60%) or below of the area median income, as defined and published by the applicable federal authorities.
- R-4. On March 30, 2009, the County of Fairfax, in its governmental and regulatory capacity (the "County"), adopted an amendment to the Fairfax County Comprehensive Plan which revised the boundaries of the Lake Anne Village Center ("LAVC") and the LAVC Commercial Revitalization Area, and which provided, among other things, a maximum allowable density of 935 dwelling units on "Land Unit D", which is comprised of the Crescent Property and a 0.85 acre parcel, designated as Tax Map Number 17-2 ((1)) 07.
- R-5. Pursuant to that certain Request for Proposal Number FRP-2000000-125, dated February 9, 2012, and issued under the auspices of the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (2012) (such Request for Proposal, as subsequently amended by certain addendums, collectively, the "RFP"), Owner desired to enter into a contract with a developer for the redevelopment of the Crescent Property which would, among other things, achieve a comprehensive redevelopment plan that aligned with the vision of the Comprehensive Plan, including the preservation of affordable housing, the creation of additional workforce housing and a development that would serve as a catalyst for the revitalization of the LAVC.

- R-6. Lake Anne Development Partners, LLC, a Virginia limited liability company (the "LADP"), submitted a response to the RFP which was determined to be the most responsive to the RFP.
- R-7. As part of its response to the RFP and further negotiations with Owner, LADP partnered with CPDC to design, construct, operate and maintain replacement housing for the Existing Units (the "Project") on a portion of the Crescent Property (the "Property"), as more particularly identified in the Ground Lease (defined below).
- R-8. In connection with the RFP and the overall revitalization of the LAVC, Owner and LADP have entered into that certain Agreement of Purchase and Sale, dated as of the date hereof (the "Purchase Agreement") for the sale by Owner to LADP of the remainder of the Crescent Property that will not be a part of the Project.
- R-9. Optionee and Owner agree that, subject to Optionee satisfying certain conditions precedent, as set forth in this Agreement below, Optionee will enter into a ninety-nine year ground lease for the Property (the "Ground Lease").
- R-10. Optionee and Owner desire to enter into this Agreement setting forth Optionee's option to enter into the Ground Lease for the Property upon the satisfaction of certain conditions, as hereinafter set forth.

NOW THEREFORE for and in consideration of the mutual promises of the parties and of other good and valuable consideration receipt and sufficiency of which are hereby acknowledged Owner and Optionee intending to be legally bound do hereby agree as follows:

Section 1. GRANT OF OPTION.

1.1 Property. Owner hereby grants to Optionee an option to lease the Property, subject to all of the terms and conditions of this Agreement. The term "Property" includes (a) the real property (the "Land") more particular described in *Exhibit A* of the Ground Lease, which is attached as Schedule 1 to this Agreement, and made a part hereof; (b) all improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 7.1 below); and (c) any entitlements, governmental approvals, permits, and other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by the Owner.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the "Option."

1.3 Memorandum of Option. Concurrently with the execution of this Agreement Owner shall execute, acknowledge and deliver to Optionee a memorandum of option in a recordable form (the "Option Memorandum"), which Option Memorandum may be recorded by Optionee in the Official Records of Fairfax County, Virginia (the "Official Records"). In the event Optionee records the Option Memorandum in the Official Records, Optionee shall be responsible for payment of all fees and taxes associated with such recording.

1.4 Effect of Agreement; Interest in Real Property. The parties intend that this Agreement is given by Owner to Optionee as an option to lease the Property. The parties intend that this Agreement creates a valid and present encumbrance on the Property in favor of Optionee, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Official Records. Therefore, the Option shall be deemed an encumbrance upon the Property during the term of this Agreement effective as of the Effective Date and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns (subject to Section 10.7 below).

Section 2. **INDEPENDENT CONSIDERATION.**

In consideration of and concurrently with Owner entering into this Agreement, Optionee agrees to pay to Owner the sum of Ten Dollars (\$10.00) as independent consideration for the Option (the "Consideration"). The Consideration has been bargained for and agreed to as separate and independent consideration for Optionee's option to lease the Property pursuant to the terms herein, and for Owner's execution and delivery of this Agreement. The Consideration shall be deemed fully earned by Owner upon receipt, and shall be considered non-refundable to Optionee.

Section 3. **TERM; EXTENSION PERIOD; EXERCISE OF OPTION.**

3.1 Term of Agreement; Right to Extend. The term of this Agreement (the "Term") shall commence on the Effective Date and shall expire on the earlier of: (i) the date Closing occurs; or (ii) October 31, 2017, subject to being extended as provided in this Section (clause (ii) being hereafter referred to as the "Termination Date"). Notwithstanding the foregoing, Optionee shall have the one time right to extend the Termination Date for a period of one year, until October 31, 2018 (the "Extended Termination Date"). Optionee's right to extend the Term until the Extended Termination Date is subject to the following conditions being met:

(a) prior to the Termination Date, Optionee sends notice to Owner of its election to extend the Term until the Extended Termination Date; and

(b) LADP shall have complied with all of the terms and conditions in the Purchase Agreement that are required of LADP in order to extend the Outside Closing Date (as defined in the Purchase Agreement (i.e. December 31, 2016)) to the Extended Outside Closing Date (as defined in the Purchase Agreement (i.e. December 31, 2017)).

In the event that the conditions set forth above are satisfied within the time periods set forth herein (or in the Purchase Agreement), the Term shall thereafter be extended until the Extended Termination Date. If either or both of the conditions set forth herein have not been satisfied within the necessary time periods, Optionee will be deemed to have forever waived its right to extend the Term of this Agreement will expire at 11:59 p.m. on the Termination Date.

3.2 Condition to Right to Exercise. Optionee may exercise the Option only if all of the following conditions have been met: (i) all of the conditions precedent set forth in Section 8.2

below have been satisfied; and (ii) Optionee has otherwise performed or satisfied all of its obligations under this Agreement.

3.3 Exercise Notice. Optionee shall exercise the Option (if at all) at any time during the Term, provided Optionee has satisfied the conditions set forth in Section 3.2 above, by delivering a written notice to Owner (the **“Option Notice”**). The Option Notice shall include: (i) a certification from Optionee that has satisfied the conditions precedent set forth in Section 8.2; (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the **“Supporting Documentation”**). Upon the Owner’s receipt of the Option Notice, the Owner shall have thirty (30) days to review the Supporting Documentation, and within such period the Owner shall deliver a written notice to Optionee either approving of the Supporting Documentation, or disapproving of all, or a portion, of the Supporting Documentation. In the event Owner approves of the Supporting Documentation, then the parties shall continue to proceed to the Closing in accordance with this Agreement. In the event Owner disapproves of all, or a portion of, the Supporting Documentation, then Owner’s written notice (the **“Disapproval Notice”**) shall set forth, in detail, each and every one of the Owner’s objections to the Supporting Documentation, and any such additional information required by Owner to approve of the Supporting Documentation. Thereafter, within thirty (30) days following the Optionee’s receipt of the Disapproval Notice, the Optionee shall submit such additional information, or other documentation, requested by the Owner in the Disapproval Notice. The process for the Owner’s review and approval of the Supporting Documentation shall continue until the Owner has approved of the Supporting Documentation, and the Owner shall have no obligation to execute the Ground Lease until the Optionee has obtained such approval from the Owner; provided, however, in no event shall the Owner unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.4 Failure to Exercise. If Optionee fails to deliver the Option Notice by the Termination Date (or Extended Termination Date, if applicable), then (a) Owner shall have no obligation to refund the Consideration to Optionee; (b) Optionee shall promptly deliver to Owner such documentation (fully executed and acknowledged) reasonably requested by Owner to evidence termination of this Agreement; (c) this Agreement shall immediately terminate without further action of the parties; and (d) the parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.4 is not intended to and does not in any way limit or affect any of the rights or remedies available to any party in the event the other party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

Section 4. **TERMS OF LEASE.**

At the Closing, Owner and Optionee shall enter into the Ground Lease, which will be substantially in the form of Schedule 1 attached hereto and made a part hereof by this reference (except: (i) to the extent such terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 7.1 below); or (ii) as otherwise mutually agreed to by Owner and Optionee). Promptly after delivery of the Option Notice, to the extent necessary, the parties shall meet in good faith to determine if any modifications are necessary to the proposed Ground Lease to reflect either any new, or

otherwise unanticipated, circumstances regarding the Property, financing of the Project or any changes in Virginia law that make any term or provision of the proposed Ground Lease invalid or unenforceable.

Section 5. REPRESENTATIONS AND WARRANTIES OF OWNER.

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, Optionee has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Property made by Owner or any of Owner's agents or employees.

5.2 Representations and Warranties of Owner. Owner represents and warrants that the following facts and circumstances are true and correct as of the Effective Date and Owner shall use reasonable efforts to ensure that the following facts and circumstances are true and correct as of the Closing. In the event that any of the following representations and warranties are not true and correct as of the date Optionee delivers the Option Notice to Owner, Owner shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. Owner is a political subdivision of the Commonwealth of Virginia. Owner has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Owner in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Owner, enforceable in accordance with its respective terms. Owner has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by Owner or the performance of any of Owner's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by Owner, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Owner's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than Optionee holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property (excluding residential tenants of Existing Units).

5.3 Representations and Warranties of Optionee. Optionee represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date Optionee delivers the Option Notice to Owner, Optionee shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. CPDC is a Maryland non-stock corporation. Optionee has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by Optionee have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Optionee in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Optionee, enforceable in accordance with their respective terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by Optionee or the performance of any of Optionee's obligations hereunder. In the event that CPDC assigns this Agreement (in accordance with its terms) to another entity acting as Optionee hereunder, such Optionee will make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by Optionee, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Owner's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. To Optionee's knowledge, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened against or affecting any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either party becomes aware of facts or circumstances after the Effective Date that might result in any of that party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such party shall give prompt written notice to the other party of such facts or circumstances.

Section 6. **PROPERTY CONDITION; RIGHT OF ENTRY.**

6.1 Property Condition. Optionee acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, Owner has made no representations or warranties, express or implied, regarding the Property or matters affecting the Property, whether made by Owner, or on Owner's behalf or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Property shall be conveyed subject to, and in accordance with, the terms and conditions of the Ground Lease.

6.2 Right of Entry. From and after the Effective Date of this Agreement, Optionee shall have reasonable rights of access to the Property for the purposes of performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither Optionee nor its contractors shall unreasonably disrupt the normal operation of the Property. All such entry shall be coordinated in advance with appropriate on-site representatives of Owner or its managing agent. Prior to Optionee entering the Property to conduct the inspections and tests described above, Optionee (or its contractor) shall obtain and maintain, at Optionee's (or its contractor's, as the case may be) sole cost and expense, and shall

deliver to Owner evidence of, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of Owner, shall deliver to Owner evidence of general liability insurance, from an insurer reasonably acceptable to Owner, in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policy to name Owner as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by Optionee or its agents, employees or contractors in connection with such inspections and tests. Owner shall have the right, in its discretion, to accompany Optionee and/or its agents during any inspection provided Owner or its agents do not unreasonably interfere with Optionee's inspection. Optionee shall indemnify and hold Owner harmless from any loss, cost, damage or expense occasions to Owner as a result of the entry onto the Property by Optionee or any consultant or agent of Optionee.

Section 7. **CLOSING.**

7.1 Time. On a date prior to the Termination Date (or Extended Termination Date, if applicable) and no later than ninety (90) days after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 8.1 and Section 8.2, the parties shall each execute and exchange original counterparts and deposit into escrow the documents described in Section 7.3 and Section 7.4 below. The parties shall close the transaction contemplated by this Agreement (the "Closing") on a date (the "Closing Date") that shall be selected by Optionee giving at least fifteen (15) business days prior notice to Owner, unless otherwise agreed in writing by the parties.

7.2 Escrow. The parties shall conduct the Closing through Commonwealth Land Title Insurance Company (the "Escrow Agent") or such other party mutually agreed between the parties at the time of Closing. The terms of this Agreement (including, but not limited to, the terms contained in this Section 7), together with such additional instructions as the Escrow Agent shall reasonably request and to which the parties shall agree, shall constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

7.3 Owner's Deposits into Escrow. Owner shall deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to between Owner and Optionee in recordable form (the "Memorandum of Lease");
- (c) A certificate of Owner signed by Owner affirming that all of Owner's representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided however, to the extent the Owner is of facts or circumstances that result

in Owner's representations or warranties set forth in Section 5.2 not being true as of the Closing, the Owner shall disclose such facts or circumstances in such certificate (the "Owner Certificate");

(d) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for conveyance of the Property in accordance with the terms of this Agreement.

7.4 Optionee's Deposits into Escrow. Optionee shall deposit into escrow on or before Closing:

(a) Two duly executed counterpart originals of the Ground Lease;

(b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;

(c) A certificate of Optionee signed by a person duly authorized to do so on behalf of Optionee, affirming that all of the representations and warranties of Optionee set forth in Section 5.3 are true in all material respects as of the Closing Date; provided however, to the extent Optionee is aware of facts or circumstances that result in Optionee's representations or warranties set forth in Section 5.3 not being true as of the Closing, the Optionee shall disclose such facts or circumstances in such certificate (the "Optionee Certificate");

(d) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of Optionee;

(e) The Base Rent payment in the amount of **[up to - Two Million Five Hundred Thousand Dollars (\$2,500,000) – TO BE DETERMINED AT CLOSING]** in immediately available funds;

(f) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for conveyance of the Property in accordance with this Agreement.

7.5 Closing. When the Escrow Agent has received all documents identified in Section 7.3 and Section 7.4, and has received written notification from Optionee and Owner that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent shall take the following actions in the following chronological order:

(a) Record in the Official Records the Memorandum of Lease (marked for return to Optionee) against the Land;

(b) Deliver to Optionee: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the Owner Certificate;

(c) Deliver to Owner: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the Optionee Certificate.

7.6 Closing Costs. As additional consideration for the lease of the Property pursuant to the Ground Lease, Optionee shall pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

Section 8. **CONDITIONS PRECEDENT; COVENANTS.**

8.1 Optionee's Conditions. Optionee's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived (other than Section 8.1(d) and Section 8.1(e), which may not be waived by Optionee) unless Optionee exercises its rights pursuant to Section 8.4 below to terminate the Agreement or to extend the time for the Closing:

(a) Representations and Warranties. Owner's representations and warranties contained in Section 5.2, as restated as of the Closing in the Owner Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the Owner Certificate shall be acceptable to Optionee, in its sole but reasonable discretion.

(c) Performance. Owner shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by Owner prior to or at the Closing.

(d) Tax Credit Award. Optionee shall have obtained from the Virginia Housing and Development Authority (VHDA) an award of nine percent (9%) low-income housing tax credits (Tax Credits) for financing the construction to occur under the Ground Lease (and any and all challenge periods related to such award have expired).

(e) Financing. Optionee shall have obtained from investors and lenders binding commitments to provide loan or equity financing in amounts substantially similar to the amounts set forth in the application to VHDA for Tax Credits.

(f) Permits and Construction Approvals. Optionee shall have applied for all governmental approvals and permits, including building permits for the construction of the buildings under the Ground Lease.

8.2 Owner's Conditions. Owner's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived unless Owner exercises its rights pursuant to Section 8.4 below to terminate the Agreement or to extend the time for the Closing:

(a) Representations and Warranties. Optionee's representations and warranties contained in Section 5.3, as restated as of the Closing in the Optionee Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the Optionee Certificate shall be acceptable to Owner, in its sole but reasonable discretion.

(c) Performance. Optionee shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by Optionee prior to or at the Closing.

(d) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Optionee that would materially and adversely affect the ability of Optionee to perform its obligations under this Agreement.

(e) Tax Credit Award. Optionee shall have obtained from VHDA an award of Tax Credits for financing the construction to occur under the Ground Lease (and any and all challenge periods related to such award have expired).

(f) Financing. Optionee shall have obtained from investors and lenders binding commitments to provide loan or equity financing in amounts substantially similar to the amounts set forth in the application to VHDA for Tax Credits.

(g) Permits and Construction Approvals. Optionee shall have applied for all governmental approvals and permits, including building permits for the construction of the buildings under the Ground Lease.

(h) Construction Contract. Optionee shall have entered into a contract with a reputable general contractor for the construction of the buildings and other improvements to be constructed under the Ground Lease.

(i) Approval of Supporting Documentation. Owner has approved of the Supporting Documentation in accordance with Section 3.

8.3 Additional Optionee Covenants. In addition to the obligations of Optionee under Section 8.2 above, Optionee covenants and agrees to satisfy the terms of this Section 8.3 within the time periods prescribed herein, prior to the Closing:

(a) Filing of Plans. Following the complete execution of this Agreement, Optionee shall cause to be prepared with respect to the Property; (i) a site plan for the Project; and (ii) the Plans and Specifications (as defined in the Ground Lease). Purchaser, at no expense to Owner, shall be obligated to diligently prosecute the generation and submission of the site plan and Plans and Specifications.

In the event Optionee fails to satisfy the covenants set forth in this Section, Owner may avail itself to the rights and remedies set forth in Section 8.4 and Section 9 below.

8.4 Failure of Conditions. So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition (*provided however*, that such extension may not be beyond the Termination Date (or Extended Termination Date, if applicable), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. If such party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either party is not satisfied due to a breach of this Agreement by the other party, the benefitted party's rights and remedies shall be as set forth in Section 9 (for example, a failure or refusal to perform a party's obligations under this Agreement).

Section 9. **DEFAULT; REMEDIES.**

9.1 Owner Default. In the event Owner refuses to consummate the transaction contemplated by this Agreement or in the case of any other default or breach by Owner hereunder, Optionee shall give Owner written notice of such default or breach and shall provide Owner with thirty (30) days to cure the default or breach. In the event Owner fails to cure the default or breach within such thirty (30) day period, Optionee shall be entitled to (a) seek specific performance to enjoin Owner to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. Upon any termination by Optionee under this Section 9.1, Optionee shall be entitled to receive a refund of the Consideration previously paid. Additionally, Optionee may terminate the Option if any condition to Closing contained in Section 8.1 has not been satisfied or waived by Optionee in writing by the Closing Date. Notwithstanding anything set forth above, Optionee shall not be entitled to recover any monetary damages from the Owner in the event the Owner defaults or breaches this Agreement and fails to convey the Property (other than a refund of the Consideration) except if such failure is the result of Owner's refusal to convey the Property and (x) all Owner's Conditions have been satisfied; and (y) Optionee is not in default under this Agreement, beyond all applicable notice and cure periods.

9.2 Optionee Default. In the case of any default or breach by Optionee hereunder, Owner shall give Optionee written notice of such default or breach and shall provide Optionee with thirty (30) days to cure the default or breach. In the event Optionee fails to cure the default or breach within such thirty (30) day period, Owner may terminate the Option. Additionally, Owner may terminate the Option in the event of any condition to Closing contained in Section 8.2 has not been satisfied or waived by Owner in writing by the Closing Date. Owner's sole remedy for any default or breach by Optionee hereunder shall be terminating the Option; in no event shall Owner be entitled to any damages from Optionee.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 No Brokers, Finders, Etc. None of the parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

10.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the parties shall pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

10.3 Complete Agreement; Waiver and Modification, Etc. This Agreement constitutes the entire agreement between the parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the parties. There are no representations, warranties, covenants or conditions by or benefiting any party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants or conditions being hereby expressly disclaimed. No person or entity other than the parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof or thereof, shall require the consent of any person or entity other than the parties hereto, nor shall any such amendment, supplement, termination or waiver be binding on a party to this Agreement unless made in a writing signed by such party.

10.4 Communications. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (öCommunicationsö) shall be given in writing to the parties at their respective addresses set forth below, or at such other address as a party shall designate for itself in writing in accordance with this Section:

If to Optionee, to:

Community Preservation and Development Corporation
Attention: Christopher LoPiano
8403 Colesville Road, Suite 1150
Silver Spring, MD 20910

With copies to:

Klein Hornig LLP
Attention: Aaron OöToole
1275 K Street NW, Suite 1200
Washington, DC 20005

If to Owner, to:

Board of Supervisors of Fairfax County
Attention: County Executive
12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Fax: (703) 324-3956

With a copies to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Fax: (703) 324-2665

-and-

Oldaker Law Group, LLP
Attention: Jeffrey A. Mitchell, Esq.
818 Connecticut Avenue N.W.
Suite 1100
Washington, D.C. 20006
Fax: (202) 464-0669

Communications may be transmitted (a) by personal delivery, (b) by delivery by messenger, express or air courier or similar courier, and (c) by delivery by United States first class certified or registered mail, postage prepaid. Except as otherwise provided in this Agreement, delivery or service of any Communication shall be deemed effective only upon receipt, and receipt shall be deemed to have occurred when the Communication was delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Communication or was present but refused receipt of such Communication; provided, any Communication delivered after 5:00 P.M. local time of place of receipt, or on a day other than a business day, shall be deemed received on the next succeeding business day.

10.5 Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

10.6 Headings; References; ðHereof,ö Etc. The Section headings in this Agreement are provided for convenience only, and shall not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Schedules refer, unless otherwise specified, to the designated Section of or Schedule to this Agreement, and terms such as ðherein,ö ðheretoö and ðhereofö used in this Agreement refer to this Agreement as a whole.

10.7 Successors and Assigns. Optionee may not assign its rights under this Agreement to any party without the consent of Owner, which may be withheld in Owner's sole and absolute discretion. Notwithstanding the foregoing to the contrary, Optionee shall be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with CPDC, or to any person or entity resulting from a merger or consolidation with CPDC, or to any person or entity which acquires all the assets of CPDC's business as a going concern pursuant to a written agreement, reasonably acceptable to Owner, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 10.7, (ii) the assignee assumes, in full, the obligations of Optionee hereunder, and (iii) Optionee provides Owner with written notice of any such assignment.

10.8 Severability. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

10.9 Cumulative Rights and Remedies. The rights and remedies of each party under this Agreement are cumulative, except as otherwise expressly provided.

10.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the parties contained in this Agreement shall be considered material and shall be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

10.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the parties, at their own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by another party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another party to evidence or carry out the intent of or to implement this Agreement.

10.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

10.13 Time. Whether expressly so stated or not in connection with any obligation, time is of the essence in the performance of each party's respective obligations under this Agreement,

and no notice of a party's intent to require strict compliance with any of the deadlines set forth in this Agreement is required. In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

10.14 Estoppel Certificates. Each party shall, from time to time upon fifteen (15) days prior request by another party, execute, acknowledge and deliver to the requesting party a certificate signed by an authorized representative of such party stating that to the knowledge of such party this Agreement (a) is or is not in full force and effect, (b) is or is not unmodified (and, if modified, the details of the modification(s)), and (c) that default(s) do or do not exist hereunder (and if defaults do exist, the nature thereof to the extent known).

10.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

10.16 Appropriations. Owner and Optionee agree that any financial obligations imposed upon Owner under this Agreement shall be binding only to the extent of appropriations by the Fairfax County Board of Supervisors, in their governmental capacity.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

OWNER:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By: _____
Name: _____
Title: _____

CPDC:

COMMUNITY PRESERVATION AND DEVELOPMENT CORPORATION,
A Maryland non-stock corporation

By: _____
Name: _____
Title: _____

SCHEDULE 1

GROUND LEASE

(Attached)

CONTRACT TO GROUND LEASE
(Lake Anne/Crescent D4 Building)

This Contract to Ground Lease (the "Agreement") is made and entered into as of _____, 2015 (the "Effective Date") by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic, in its proprietary capacity and not in its governmental or regulatory capacity ("Owner"), and COMMUNITY PRESERVATION AND DEVELOPMENT CORPORATION, a Maryland non-stock corporation ("CPDC") or its permitted assign or designee (CPDC or such assignee or designee being hereafter referred to as, "Optionee").

RECITALS:

- R-1. Owner is the fee simple owner of a 16.5 acre tract of land in Reston, Virginia, collectively having tax assessment numbers as 17-2 ((16)) 1A and 17-2 ((14)) (1) 2G, upon which certain residential apartment buildings are built and which are commonly referred to as the Crescent Apartments (the "Crescent Property").
- R-2. The Crescent Property is currently leased to the Fairfax County Redevelopment and Housing Authority ("FCRHA") pursuant to an agreement by and between Owner and the FCRHA.
- R-3. The Crescent Property currently consists of five (5) garden-style 3-story apartment buildings, containing a total of 181 units (the "Existing Units"), a majority of which are currently affordable to households earning sixty percent (60%) or below of the area median income, as defined and published by the applicable federal authorities.
- R-4. On March 30, 2009, the County of Fairfax, in its governmental and regulatory capacity (the "County"), adopted an amendment to the Fairfax County Comprehensive Plan which revised the boundaries of the Lake Anne Village Center ("LAVC") and the LAVC Commercial Revitalization Area, and which provided, among other things, a maximum allowable density of 935 dwelling units on "Land Unit D", which is comprised of the Crescent Property and a 0.85 acre parcel, designated as Tax Map Number 17-2 ((1)) 07.
- R-5. Pursuant to that certain Request for Proposal Number FRP-2000000-125, dated February 9, 2012, and issued under the auspices of the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (2012) (such Request for Proposal, as subsequently amended by certain addendums, collectively, the "RFP"), Owner desired to enter into a contract with a developer for the redevelopment of the Crescent Property which would, among other things, achieve a comprehensive redevelopment plan that aligned with the vision of the Comprehensive Plan, including the preservation of affordable housing, the creation of additional workforce housing and a development that would serve as a catalyst for the revitalization of the LAVC.
- R-6. Lake Anne Development Partners, LLC, a Virginia limited liability company ("LADP"), submitted a response to the RFP which was determined to be the most responsive to the

RFP.

- R-7. As part of its response to the RFP and further negotiations with Owner, LADP partnered with CPDC to design, construct, operate and maintain replacement housing for the Existing Units (the "Project") on a portion of the Crescent Property (the "Property"), as more particularly identified in the Ground Lease (defined below).
- R-8. In connection with the RFP and the overall revitalization of the LAVC, Owner and LADP have entered into that certain Agreement of Purchase and Sale, dated as of the date hereof (the "Purchase Agreement") for the sale by Owner to LADP of the remainder of the Crescent Property that will not be a part of the Project.
- R-9. Optionee and Owner agree that, subject to Optionee satisfying certain conditions precedent, as set forth in this Agreement below, Optionee will enter into a ninety-nine year ground lease for the Property (the "Ground Lease").
- R-10. Optionee and Owner desire to enter into this Agreement setting forth Optionee's option to enter into the Ground Lease for the Property upon the satisfaction of certain conditions, as hereinafter set forth.

NOW THEREFORE for and in consideration of the mutual promises of the parties and of other good and valuable consideration receipt and sufficiency of which are hereby acknowledged Owner and Optionee intending to be legally bound do hereby agree as follows:

Section 1. GRANT OF OPTION.

1.1 Property. Owner hereby grants to Optionee an option to lease the Property, subject to all of the terms and conditions of this Agreement. The term "Property" includes (a) the real property (the "Land") more particular described in *Exhibit A* of the Ground Lease, which is attached as Schedule 1 to this Agreement, and made a part hereof; (b) all improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 7.1 below); and (c) any entitlements, governmental approvals, permits, and other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by the Owner.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the "Option."

1.3 Memorandum of Option. Concurrently with the execution of this Agreement Owner shall execute, acknowledge and deliver to Optionee a memorandum of option in a recordable form (the "Option Memorandum"), which Option Memorandum may be recorded by Optionee in the Official Records of Fairfax County, Virginia (the "Official Records"). In the event Optionee records the Option Memorandum in the Official Records, Optionee shall be responsible for payment of all fees and taxes associated with such recording.

1.4 Effect of Agreement; Interest in Real Property. The parties intend that this Agreement is given by Owner to Optionee as an option to lease the Property. The parties intend

that this Agreement creates a valid and present encumbrance on the Property in favor of Optionee, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Official Records. Therefore, the Option shall be deemed an encumbrance upon the Property during the term of this Agreement effective as of the Effective Date and shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns (subject to Section 10.7 below).

Section 2. **INDEPENDENT CONSIDERATION.**

In consideration of and concurrently with Owner entering into this Agreement, Optionee agrees to pay to Owner the sum of Ten Dollars (\$10.00) as "independent consideration" for the Option (the "Consideration"). The Consideration has been bargained for and agreed to as separate and independent consideration for Optionee's option to lease the Property pursuant to the terms herein, and for Owner's execution and delivery of this Agreement. The Consideration shall be deemed fully earned by Owner upon receipt, and shall be considered non-refundable to Optionee.

Section 3. **TERM; EXTENSION PERIOD; EXERCISE OF OPTION.**

3.1 Term of Agreement; Right to Extend. The term of this Agreement (the "Term") shall commence on the Effective Date and shall expire on the earlier of: (i) the date Closing occurs; or (ii) October 31, 2017, subject to being extended as provided in this Section (clause (ii) being hereafter referred to as the "Termination Date"). Notwithstanding the foregoing, Optionee shall have the one time right to extend the Termination Date for a period of one year, until October 31, 2018 (the "Extended Termination Date"). Optionee's right to extend the Term until the Extended Termination Date is subject to the following conditions being met:

(a) prior to the Termination Date, Optionee sends notice to Owner of its election to extend the Term until the Extended Termination Date; and

(b) LADP shall have complied with all of the terms and conditions in the Purchase Agreement that are required of LADP in order to extend the Outside Closing Date (as defined in the Purchase Agreement (i.e. December 31, 2016)) to the Extended Outside Closing Date (as defined in the Purchase Agreement (i.e. December 31, 2017)).

In the event that the conditions set forth above are satisfied within the time periods set forth herein (or in the Purchase Agreement), the Term shall thereafter be extended until the Extended Termination Date. If either or both of the conditions set forth herein have not been satisfied within the necessary time periods, Optionee will be deemed to have forever waived its right to extend the Term of this Agreement will expire at 11:59 p.m. on the Termination Date.

3.2 Condition to Right to Exercise. Optionee may exercise the Option only if all of the following conditions have been met: (i) all of the conditions precedent set forth in Section 8.2 below have been satisfied; and (ii) Optionee has otherwise performed or satisfied all of its obligations under this Agreement.

3.3 Exercise Notice. Optionee shall exercise the Option (if at all) at any time during the Term, provided Optionee has satisfied the conditions set forth in Section 3.2 above, by delivering a written notice to Owner (the “**Option Notice**”). The Option Notice shall include: (i) a certification from Optionee that has satisfied the conditions precedent set forth in Section 8.2; (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon the Owner’s receipt of the Option Notice, the Owner shall have thirty (30) days to review the Supporting Documentation, and within such period the Owner shall deliver a written notice to Optionee either approving of the Supporting Documentation, or disapproving of all, or a portion, of the Supporting Documentation. In the event Owner approves of the Supporting Documentation, then the parties shall continue to proceed to the Closing in accordance with this Agreement. In the event Owner disapproves of all, or a portion of, the Supporting Documentation, then Owner’s written notice (the “**Disapproval Notice**”) shall set forth, in detail, each and every one of the Owner’s objections to the Supporting Documentation, and any such additional information required by Owner to approve of the Supporting Documentation. Thereafter, within thirty (30) days following the Optionee’s receipt of the Disapproval Notice, the Optionee shall submit such additional information, or other documentation, requested by the Owner in the Disapproval Notice. The process for the Owner’s review and approval of the Supporting Documentation shall continue until the Owner has approved of the Supporting Documentation, and the Owner shall have no obligation to execute the Ground Lease until the Optionee has obtained such approval from the Owner; provided, however, in no event shall the Owner unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.4 Failure to Exercise. If Optionee fails to deliver the Option Notice by the Termination Date (or Extended Termination Date, if applicable), then (a) Owner shall have no obligation to refund the Consideration to Optionee; (b) Optionee shall promptly deliver to Owner such documentation (fully executed and acknowledged) reasonably requested by Owner to evidence termination of this Agreement; (c) this Agreement shall immediately terminate without further action of the parties; and (d) the parties shall have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.4 is not intended to and does not in any way limit or affect any of the rights or remedies available to any party in the event the other party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

Section 4. **TERMS OF LEASE.**

At the Closing, Owner and Optionee shall enter into the Ground Lease, which will be substantially in the form of Schedule 1 attached hereto and made a part hereof by this reference (except: (i) to the extent such terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 7.1 below); or (ii) as otherwise mutually agreed to by Owner and Optionee). Promptly after delivery of the Option Notice, to the extent necessary, the parties shall meet in good faith to determine if any modifications are necessary to the proposed Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Property, financing of the Project or any changes in Virginia law that make any term or provision of the proposed Ground Lease invalid or unenforceable.

Section 5. REPRESENTATIONS AND WARRANTIES OF OWNER.

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, Optionee has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Property made by Owner or any of Owner's agents or employees.

5.2 Representations and Warranties of Owner. Owner represents and warrants that the following facts and circumstances are true and correct as of the Effective Date and Owner shall use reasonable efforts to ensure that the following facts and circumstances are true and correct as of the Closing. In the event that any of the following representations and warranties are not true and correct as of the date Optionee delivers the Option Notice to Owner, Owner shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. Owner is a political subdivision of the Commonwealth of Virginia. Owner has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Owner in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Owner, enforceable in accordance with its respective terms. Owner has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by Owner or the performance of any of Owner's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by Owner, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Owner's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than Optionee holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property (excluding residential tenants of Existing Units).

5.3 Representations and Warranties of Optionee. Optionee represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date Optionee delivers the Option Notice to Owner, Optionee shall use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. CPDC is a Maryland non-stock corporation. Optionee has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement

by Optionee have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Optionee in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Optionee, enforceable in accordance with their respective terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by Optionee or the performance of any of Optionee's obligations hereunder. In the event that CPDC assigns this Agreement (in accordance with its terms) to another entity acting as Optionee hereunder, such Optionee will make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by Optionee, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Owner's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations shall be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. To Optionee's knowledge, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened against or affecting any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either party becomes aware of facts or circumstances after the Effective Date that might result in any of that party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such party shall give prompt written notice to the other party of such facts or circumstances.

Section 6. **PROPERTY CONDITION; RIGHT OF ENTRY.**

6.1 Property Condition. Optionee acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, Owner has made no representations or warranties, express or implied, regarding the Property or matters affecting the Property, whether made by Owner, or on Owner's behalf or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Property shall be conveyed subject to, and in accordance with, the terms and conditions of the Ground Lease.

6.2 Right of Entry. From and after the Effective Date of this Agreement, Optionee shall have reasonable rights of access to the Property for the purposes of performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither Optionee nor its contractors shall unreasonably disrupt the normal operation of the Property. All such entry shall be coordinated in advance with appropriate on-site representatives of Owner or its managing agent. Prior to Optionee entering the Property to conduct the inspections and tests described above, Optionee (or its contractor) shall obtain and maintain, at Optionee's (or its contractor's, as the case may be) sole cost and expense, and shall deliver to Owner evidence of, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of Owner, shall deliver to Owner evidence of general liability insurance, from an insurer reasonably acceptable to Owner,

in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence, such policy to name Owner as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by Optionee or its agents, employees or contractors in connection with such inspections and tests. Owner shall have the right, in its discretion, to accompany Optionee and/or its agents during any inspection provided Owner or its agents do not unreasonably interfere with Optionee's inspection. Optionee shall indemnify and hold Owner harmless from any loss, cost, damage or expense occasions to Owner as a result of the entry onto the Property by Optionee or any consultant or agent of Optionee.

Section 7. **CLOSING.**

7.1 Time. On a date prior to the Termination Date (or Extended Termination Date, if applicable) and no later than ninety (90) days after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 8.1 and Section 8.2, the parties shall each execute and exchange original counterparts and deposit into escrow the documents described in Section 7.3 and Section 7.4 below. The parties shall close the transaction contemplated by this Agreement (the "Closing") on a date (the "Closing Date") that shall be selected by Optionee giving at least fifteen (15) business days prior notice to Owner, unless otherwise agreed in writing by the parties.

7.2 Escrow. The parties shall conduct the Closing through Commonwealth Land Title Insurance Company (the "Escrow Agent") or such other party mutually agreed between the parties at the time of Closing. The terms of this Agreement (including, but not limited to, the terms contained in this Section 7), together with such additional instructions as the Escrow Agent shall reasonably request and to which the parties shall agree, shall constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement shall control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

7.3 Owner's Deposits into Escrow. Owner shall deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to between Owner and Optionee in recordable form (the "Memorandum of Lease");
- (c) A certificate of Owner signed by Owner affirming that all of Owner's representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided however, to the extent the Owner is of facts or circumstances that result in Owner's representations or warranties set forth in Section 5.2 not being true as of the Closing, the Owner shall disclose such facts or circumstances in such certificate (the "Owner Certificate");

(d) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for conveyance of the Property in accordance with the terms of this Agreement.

7.4 Optionee's Deposits into Escrow. Optionee shall deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the Ground Lease;
- (b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;
- (c) A certificate of Optionee signed by a person duly authorized to do so on behalf of Optionee, affirming that all of the representations and warranties of Optionee set forth in Section 5.3 are true in all material respects as of the Closing Date; provided however, to the extent Optionee is aware of facts or circumstances that result in Optionee's representations or warranties set forth in Section 5.3 not being true as of the Closing, the Optionee shall disclose such facts or circumstances in such certificate (the "Optionee Certificate");
- (d) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of Optionee;
- (e) Reserved;
- (f) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for conveyance of the Property in accordance with this Agreement.

7.5 Closing. When the Escrow Agent has received all documents identified in Section 7.3 and Section 7.4, and has received written notification from Optionee and Owner that all conditions to Closing have been satisfied or waived; then, and only then, the Escrow Agent shall take the following actions in the following chronological order:

- (a) Record in the Official Records the Memorandum of Lease (marked for return to Optionee) against the Land;
- (b) Deliver to Optionee: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the Owner Certificate;
- (c) Deliver to Owner: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the Ground Lease; and (iii) the Optionee Certificate.

7.6 Closing Costs. As additional consideration for the lease of the Property pursuant to the Ground Lease, Optionee shall pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

Section 8. **CONDITIONS PRECEDENT; COVENANTS.**

8.1 Optionee's Conditions. Optionee's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived (other than Section 8.1(d) and Section 8.1(e), which may not be waived by Optionee) unless Optionee exercises its rights pursuant to Section 8.4 below to terminate the Agreement or to extend the time for the Closing:

(a) Representations and Warranties. Owner's representations and warranties contained in Section 5.2, as restated as of the Closing in the Owner Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the Owner Certificate shall be acceptable to Optionee, in its sole but reasonable discretion.

(c) Performance. Owner shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by Owner prior to or at the Closing.

(d) Tax Credit Award. Virginia Housing and Development Authority (VHDA) shall have approved the issuance of tax-exempt bonds and a corresponding award of four percent (4%) low-income housing tax credits (Tax Credits) for financing the construction to occur under the Ground Lease.

(e) Financing. Optionee shall have obtained from investors and lenders binding commitments to provide loan or equity financing in amounts substantially similar to the amounts set forth in the application to VHDA for Tax Credits.

(f) Permits and Construction Approvals. Optionee shall have applied for all governmental approvals and permits, including building permits for the construction of the buildings under the Ground Lease.

8.2 Owner's Conditions. Owner's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which shall be deemed waived unless Owner exercises its rights pursuant to Section 8.4 below to terminate the Agreement or to extend the time for the Closing:

(a) Representations and Warranties. Optionee's representations and warranties contained in Section 5.3, as restated as of the Closing in the Optionee Certificate, shall be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the Optionee Certificate shall be acceptable to Owner, in its sole but reasonable discretion.

(c) Performance. Optionee shall have performed and complied in all material respects with all covenants, agreements, terms and conditions required by this Agreement to be performed or complied with by Optionee prior to or at the Closing.

(d) No Litigation. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against Optionee that would materially and adversely affect the ability of Optionee to perform its obligations under this Agreement.

(e) Tax Credit Award. VHDA shall have approved the issuance of tax-exempt bonds and a corresponding award of Tax Credits for financing the construction to occur under the Ground Lease.

(f) Financing. Optionee shall have obtained from investors and lenders binding commitments to provide loan or equity financing in amounts substantially similar to the amounts set forth in the application to VHDA for Tax Credits.

(g) Permits and Construction Approvals. Optionee shall have applied for all governmental approvals and permits, including building permits for the construction of the buildings under the Ground Lease.

(h) Construction Contract. Optionee shall have entered into a contract with a reputable general contractor for the construction of the buildings and other improvements to be constructed under the Ground Lease.

(i) Approval of Supporting Documentation. Owner has approved of the Supporting Documentation in accordance with Section 3.

8.3 Additional Optionee Covenants. In addition to the obligations of Optionee under Section 8.2 above, Optionee covenants and agrees to satisfy the terms of this Section 8.3 within the time periods prescribed herein, prior to the Closing:

(a) Filing of Plans. Following the complete execution of this Agreement, Optionee shall cause to be prepared with respect to the Property; (i) a site plan for the Project; and (ii) the Plans and Specifications (as defined in the Ground Lease). Purchaser, at no expense to Owner, shall be obligated to diligently prosecute the generation and submission of the site plan and Plans and Specifications.

In the event Optionee fails to satisfy the covenants set forth in this Section, Owner may avail itself to the rights and remedies set forth in Section 8.4 and Section 9 below.

8.4 Failure of Conditions. So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition (*provided however*, that such extension may not be beyond the Termination Date (or Extended Termination Date, if applicable), or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. If such party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either party is not satisfied due to a breach of this Agreement by the other party, the benefitted party's rights and remedies shall be as set forth in Section 9 (for example, a failure or refusal to perform a party's obligations under this Agreement).

Section 9. **DEFAULT; REMEDIES.**

9.1 Owner Default. In the event Owner refuses to consummate the transaction contemplated by this Agreement or in the case of any other default or breach by Owner hereunder, Optionee shall give Owner written notice of such default or breach and shall provide Owner with thirty (30) days to cure the default or breach. In the event Owner fails to cure the default or breach within such thirty (30) day period, Optionee shall be entitled to (a) seek specific performance to enjoin Owner to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. Upon any termination by Optionee under this Section 9.1, Optionee shall be entitled to receive a refund of the Consideration previously paid. Additionally, Optionee may terminate the Option if any condition to Closing contained in Section 8.1 has not been satisfied or waived by Optionee in writing by the Closing Date. Notwithstanding anything set forth above, Optionee shall not be entitled to recover any monetary damages from the Owner in the event the Owner defaults or breaches this Agreement and fails to convey the Property (other than a refund of the Consideration) except if such failure is the result of Owner's refusal to convey the Property and (x) all Owner's Conditions have been satisfied; and (y) Optionee is not in default under this Agreement, beyond all applicable notice and cure periods.

9.2 Optionee Default. In the case of any default or breach by Optionee hereunder, Owner shall give Optionee written notice of such default or breach and shall provide Optionee with thirty (30) days to cure the default or breach. In the event Optionee fails to cure the default or breach within such thirty (30) day period, Owner may terminate the Option. Additionally, Owner may terminate the Option in the event of any condition to Closing contained in Section 8.2 has not been satisfied or waived by Owner in writing by the Closing Date. Owner's sole remedy for any default or breach by Optionee hereunder shall be terminating the Option; in no event shall Owner be entitled to any damages from Optionee.

Section 10. **MISCELLANEOUS PROVISIONS.**

10.1 No Brokers, Finders, Etc. None of the parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

10.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the parties shall pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

10.3 Complete Agreement; Waiver and Modification, Etc. This Agreement constitutes the entire agreement between the parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the parties. There are no representations, warranties, covenants or conditions by or benefiting any party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants or conditions being hereby expressly disclaimed. No person or entity other than the parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof or thereof, shall require the consent of any person or entity other than the parties hereto, nor shall any such amendment, supplement, termination or waiver be binding on a party to this Agreement unless made in a writing signed by such party.

10.4 Communications. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (õCommunicationsö) shall be given in writing to the parties at their respective addresses set forth below, or at such other address as a party shall designate for itself in writing in accordance with this Section:

If to Optionee, to:

Community Preservation and Development Corporation
Attention: Christopher LoPiano
8403 Colesville Road, Suite 1150
Silver Spring, MD 20910

With copies to:

Klein Hornig LLP
Attention: Aaron OøToole
1275 K Street NW, Suite 1200
Washington, DC 20005

If to Owner, to:

Board of Supervisors of Fairfax County
Attention: County Executive
12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Fax: (703) 324-3956

With a copies to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Fax: (703) 324-2665

-and-

Oldaker Law Group, LLP
Attention: Jeffrey A. Mitchell, Esq.
818 Connecticut Avenue N.W.
Suite 1100
Washington, D.C. 20006
Fax: (202) 464-0669

Communications may be transmitted (a) by personal delivery, (b) by delivery by messenger, express or air courier or similar courier, and (c) by delivery by United States first class certified or registered mail, postage prepaid. Except as otherwise provided in this Agreement, delivery or service of any Communication shall be deemed effective only upon receipt, and receipt shall be deemed to have occurred when the Communication was delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Communication or was present but refused receipt of such Communication; provided, any Communication delivered after 5:00 P.M. local time of place of receipt, or on a day other than a business day, shall be deemed received on the next succeeding business day.

10.5 Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

10.6 Headings; References; ðHereof,ö Etc. The Section headings in this Agreement are provided for convenience only, and shall not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Schedules refer, unless otherwise specified, to the designated Section of or Schedule to this Agreement, and terms such as ðherein,ö ðheretoö and ðhereofö used in this Agreement refer to this Agreement as a whole.

10.7 Successors and Assigns. Optionee may not assign its rights under this Agreement to any party without the consent of Owner, which may be withheld in Owner's sole and absolute discretion. Notwithstanding the foregoing to the contrary, Optionee shall be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with CPDC, or to any person or entity resulting from a merger or consolidation with CPDC, or to any person or entity which acquires all the assets of CPDC's business as a going concern pursuant to a written agreement, reasonably acceptable to Owner, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 10.7, (ii) the assignee assumes, in full, the obligations of Optionee hereunder, and (iii) Optionee provides Owner with written notice of any such assignment.

10.8 Severability. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

10.9 Cumulative Rights and Remedies. The rights and remedies of each party under this Agreement are cumulative, except as otherwise expressly provided.

10.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the parties contained in this Agreement shall be considered material and shall be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

10.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the parties, at their own expense, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by another party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another party to evidence or carry out the intent of or to implement this Agreement.

10.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

10.13 Time. Whether expressly so stated or not in connection with any obligation, time is of the essence in the performance of each party's respective obligations under this Agreement,

and no notice of a party's intent to require strict compliance with any of the deadlines set forth in this Agreement is required. In the event that any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

10.14 Estoppel Certificates. Each party shall, from time to time upon fifteen (15) days prior request by another party, execute, acknowledge and deliver to the requesting party a certificate signed by an authorized representative of such party stating that to the knowledge of such party this Agreement (a) is or is not in full force and effect, (b) is or is not unmodified (and, if modified, the details of the modification(s)), and (c) that default(s) do or do not exist hereunder (and if defaults do exist, the nature thereof to the extent known).

10.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

10.16 Appropriations. Owner and Optionee agree that any financial obligations imposed upon Owner under this Agreement shall be binding only to the extent of appropriations by the Fairfax County Board of Supervisors, in their governmental capacity.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

OWNER:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By: _____
Name: _____
Title: _____

CPDC:

COMMUNITY PRESERVATION AND DEVELOPMENT CORPORATION,
A Maryland non-stock corporation

By: _____
Name: _____
Title: _____

SCHEDULE 1

GROUND LEASE

(Attached)